

Fact Sheet:

Transfer of Assets

Washington State taxpayers pay the long-term care costs of people who had assets but transferred them to relatives in order to qualify for Medicaid.

The Need for Legislation

Under current federal *transfer of asset* law and policy, Washington State has experienced estate planning that shelters assets and shifts assets to third parties (usually family members) in order to qualify for Medicaid payment for long-term care services. This means that Washington State taxpayers pay for the long-term care costs of people who had assets but transferred them to relatives. Washington, along with other states, has felt the financial impact of these practices.

A growing number of financial planners in Washington State have taken the opportunity to solicit business from the elderly. Washington is taking steps to address the issue and conserve state resources by eliminating the practice of sheltering and transferring assets in order to qualify for Medicaid.

Washington State has taken several steps to minimize sheltering and transfer of assets in order to ensure that private resources are used to pay for an individual's long-term care before state resources are expended. Some of the steps are discussed below.

Actions already taken to prohibit sheltering of assets

We hope this will discourage the practice of transferring away assets, which could be used to pay for LTC services, in order to qualify for Medicaid.

WAC 388-513-1364

Penalty period for transferring assets

In 2003 Washington amended WAC* to change the way we calculate a penalty period for transferring an asset for less than fair market value.

The penalty period is calculated by dividing the uncompensated value of the transfer by the average daily cost of private nursing facility care in the State, to establish the number of ineligible days.

* Washington Administrative Code

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Lifetime Care Contracts typically involve payment of a substantial sum of money, usually to a relative, for the future care of the individual by that relative.

For Lifetime Care Contracts, the WAC does not allow payment for future services; it only allows payment as services are provided. The following are criteria used to determine if adequate consideration is received:

- the client must have a documented need for the services provided
- services provided are services that are commonly paid for by the state
- services do not duplicate services provided by another party
- compensation is reasonable.

Other states have established similar rules regarding lifetime care contracts. Federal rules do not address lifetime care contracts.

WAC 388-513-1364

Sole Benefit Trusts

According to Federal policy, a sole-benefit trust is considered to be established for the “sole benefit” of a spouse, blind or disabled child, or disabled individual, if the trust benefits no one but that individual at the time the trust is established or any time in the future. The trust must also provide for spending the funds for the *sole benefit* of the individual on an actuarially sound basis, based on the life expectancy of the trustee. Federal law allows transferring assets into a sole benefit trust without applying a penalty period.

WAC 388-561-0100

We consider all resources of either spouse, including sole benefit trusts, as available resources in determining Medicaid eligibility.

WAC 388-561-0100

Special Needs Trusts

The state is repaid from a special needs trust set up for a client when the clients dies, or if the trust is terminated for any reason before the client dies.

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